

**THE DISTRICT OF COLUMBIA  
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of )  
)  
)

Bangkok Bistro, Inc. )

t/a Bangkok Bistro )

Renewal Application for a Retailer's )

License Class "CR" – at premises )

3251 Prospect Street, N.W. )

Washington, D.C. )  
)  
)

Applicant )  
)  
)

Case No.: 23312-03/062P

Order No.: 2003-38

BEFORE:

Roderic L. Woodson, Esquire, Chairperson

Vera M. Abbott, Member

Ellen Oppenheimer, Esquire, Member

Audrey E. Thompson, Member

Judy A. Moy, Member

Charles A. Burger, Member

Laurie Collins, Member

ALSO PRESENT:

Fred P. Moosally, III, General Counsel

Alcoholic Beverage Regulation Administration

Dimitri J. Mallios, Esquire, on behalf of the Applicant

Stephen J. O'Brien, Esquire, on behalf of the Applicant

Douglas E. Fierberg, Esquire, on behalf of the Protestants

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER**

The renewal application, filed by Bangkok Bistro, Inc., t/a Bangkok Bistro ("Applicant"), holder of a Retailer's License Class "CR" at the premises 3251 Prospect Street, N.W., Washington D.C., initially came before the Alcoholic Beverage Control Board ("Board") for a roll call hearing on May 15, 2002. It was determined that a timely protest was filed pursuant to D.C. Official Code § 25-601 (2001), by Advisory Neighborhood Commission ("ANC") 2E, The Citizens Association of Georgetown, Elizabeth Dalton Emes, Edward

L. Emes, Jr., Meda Mladek, Bobbi Blok, Marshall Burke, Rosalinda Rivera, R. Cribben, Sam Bruie, Annalle Gulley, Elizabeth Jaratte, Mavgery Friesne, Carmela Aeampora, Margueute Gould, Hayley Gorton, Beverly Bernsbun, Caroline Frost, Gillian Hearst-Shaw, and Virginia R. Emes ("Protestants").

The protest issues raised by the Protestants are whether the establishment adversely impacts on: (1) peace, order, and quiet in the neighborhood and (2) pedestrian safety. Additionally, the Protestants allege that the Applicant is in violation of its Retailer's License Class "CR" with regard to its use of its outdoor sidewalk café and summer garden seating, including the back patio.

This case came before the Board for public protest hearings on March 12, 2003, April 2, 2003, and April 9, 2003. Additionally, on April 30, 2003 the parties appeared before the Board for oral argument on the legal issue of whether the Board possesses the authority to regulate an adjacent interior or exterior area used by an ABC-licensed establishment when alcoholic beverages are not being sold, served, or consumed in that adjacent exterior or interior area. If the Board does have jurisdiction in this area, then the Board must consider whether the Applicant's current use of a summer garden and/or sidewalk café is in violation of the terms of its current ABC license. The Board notes that both parties submitted timely written briefs to the Board to support their arguments prior to the April 30, 2003 hearing. For the purposes of this Order, the Board limits its consideration to the issues and arguments presented at the April 30, 2003 hearing. The Board having considered the evidence, the testimony of the witnesses, the arguments of counsel, and the documents comprising the Board's official file, makes the following:

### FINDINGS OF FACT

1. The Applicant's transfer application, dated February 27, 1997, provided that the Applicant's establishment would occupy the first floor of 3251 Prospect Street, N.W., Washington D.C. (Board Application File No. 23312.) The Applicant filed a supplemental application, dated February 7, 1997, where the Applicant indicated that its establishment would not offer summer garden service or sidewalk service for either alcoholic beverages or food and would have a seating capacity of 160. (Board Application File No. 23312; Protestants' Exhibit No. 1.) The 160 seating capacity applied for by the Applicant and approved by the Board was consistent with the establishment's February 11, 1997 certificate of occupancy issued by the Department of Consumer and Regulatory Affairs ("DCRA") for 160 seats. (Board Application File No. 23312.) The Applicant received its ABC license via a transfer from a prior owner that was issued to the Applicant after Board approval on or about May 23, 1997. (Board Application File No. 23312.) In a letter dated June 15, 1999, through its Counsel Dimitri P. Mallios, Esquire, the Applicant requested permission to serve alcoholic beverages at a sidewalk café with twenty-eight (28) seats and forwarded the corresponding public space permit. (Board Application File No. 23312.) The Board approved this request. (Tr. 1/19/00 at 104-106.) Additionally, the Applicant submitted to the Board an application for a summer garden on its rear patio with seventy-six (76) seats on or about December 8, 2000, which included a certificate of occupancy from DCRA for restaurant seating of one

hundred and sixty (160) and summer garden seating for seventy-six (76). (Applicant's Exhibit No. 7.) However, the Applicant's most recent certificate of occupancy issued by DCRA is dated March 5, 2002 and states, "[r]estaurant seating 160 summer garden (private property) seating 76 rear 24 front (prior use same)" (Board's Exhibit No. 1.) In correspondence to the Alcoholic Beverage Regulation Administration ("ABRA") staff and the Board dated March 27, 2002, June 20, 2002, November 4, 2002, and January 29, 2003, the Applicant also requested the Board's permission to serve alcoholic beverages on the summer garden located at the rear of the Applicant's establishment and that placards be issued by the Board for community comment on the Applicant's proposed substantial change in operations. (Applicant's Exhibit Nos. 8-11.) The Applicant has also submitted a request to the Board to serve alcoholic beverages on a summer garden located in the front of the establishment with twenty-four (24) seats. (Board Application File No. 23312.) The requests made by the Applicant to sell alcoholic beverages in the two summer garden areas (76 Rear and 24 Front) have not yet been approved by the Board. Additionally, the Applicant has filed a request with the Board to increase the occupancy of its sidewalk café from twenty eight (28) to forty-four (44) seats that has also not yet been approved by the Board. (Board Application File No. 23312.)

2. ABRA Investigator Juliana Tengen visited the Applicant's establishment and compiled an investigative report dated February 19, 2003. (Tr. 3/12/03 at 38; Board's Exhibit No. 1.) Investigator Tengen testified that the Applicant informed her that the establishment has seventy-six seats (76) located in the rear patio area of the Applicant's establishment in operation during "the warm weather." (Tr. 3/12/03 at 43-44.) She testified that there were no tables present and that chairs were stacked up on the back patio when she visited the establishment. (Tr. 3/12/03 at 43-44; Board's Exhibit No. 1. at 3.) As to the certificate of occupancy, Investigator Tengen identified the establishment's March 5, 2002 certificate of occupancy which allows for restaurant seating of one hundred and sixty (160), as well as summer garden seats, including seventy six (76) seats in the rear. (Tr. 3/12/03 at 53; Board's Exhibit No. 1.) Investigator Tengen further testified that the Applicant does not have a Board permit for use of a summer garden. (Tr. 3/12/03 at 59-60.)

3. Jill Colleen Kitcharoen is one of the owners of the establishment and secretary of Bangkok Bistro, Inc. (Tr. 4/9/03 at 24.) She stated that the Applicant's establishment has operated for six years, since May 1997. (Tr. 4/9/03 at 24.) Ms. Kitcharoen also testified that the Applicant provides approximately one hundred (100) seats inside of the restaurant and that approximately one-half to one-third of the Applicant's seating is outside. (Tr. 4/9/03 at 112-114.)

4. With respect to the Applicant's sidewalk café, Ms. Kitcharoen testified that the establishment operates a sidewalk café in front of the establishment that is approved by the Board for twenty-eight seats. (Tr. 4/9/03 at 31, 56.) Ms. Kitcharoen further testified that the Applicant expanded without Board approval its seating in the front of its establishment by providing "non-alcohol" seats, in addition to the twenty-eight seats approved by the Board. (Tr. 4/9/03 at 56-57.) She testified that the boundaries of the sidewalk café are seven feet from the Applicant's building and another eight feet from the

sidewalk café boundary to the curb. (Tr. 4/9/03 at 35.) Ms. Kitcharoen testified that the Applicant exceeded the boundaries of the sidewalk café in the front of the Applicant's establishment in April 2003 when the sidewalk café was lengthened westward. (Tr. 4/9/03 at 32-33.)

5. With respect to the use and operation of a summer garden, Ms. Kitcharoen testified that the Applicant first used the back patio of their establishment for dining in 1997 and continued such use for approximately two years, until 1999. (Tr. 4/9/03 at 36-37.) She also testified that the Applicant served alcoholic beverages on that space during that period of time, but ended alcoholic beverage service on the back patio because the Applicant was fined \$2,000 by the Board and ordered to discontinue alcoholic beverage service on the back patio. (Tr. 4/9/03 at 37-39, 48.) Ms. Kitcharoen testified that the Applicant served food and alcoholic beverages on the back patio of the Applicant's establishment because the Applicant believed the Board granted permission for the Applicant to operate in that manner; however, Ms. Kitcharoen stated that the Applicant's legal counsel made a mistake when filling out the application form. (Tr. 4/9/03 at 49-53.) Ms. Kitcharoen further testified that the Applicant resumed use of the back patio without alcoholic beverage service to its customers in April or May 2001. (Tr. 4/9/03 at 39-41.) She also stated that the Applicant has not served alcoholic beverages on the back patio since the Applicant resumed dining activities on the back patio. (Tr. 4/9/03 at 40, 54-55.) Ms. Kitcharoen also stated that the Applicant believed that it could serve food on the back patio of its establishment, but not alcoholic beverages. (Tr. 4/9/03 at 55.) Ms. Kitcharoen testified that the Applicant filed an application with the Board for permission to operate a summer garden in December 2000 and that the Board has not acted on the request. (Tr. 4/9/03 at 41-44.) She also testified that once the Applicant received a certificate of occupancy from DCRA for the rear, the Applicant "decided to open the summer garden but for food service only." (Tr. 4/9/03 at 44.)

6. Thomas Birch is a resident of the District of Columbia and the Chair of ANC 2E. (Tr. 3/12/03 at 65-66.) Mr. Birch testified that ANC 2E has received complaints that the Applicant was not abiding by the terms of its license by exceeding the number of seats stipulated in its license. (Tr. 3/12/03 at 67.) He also testified that he believes that seats are not permitted on the rear patio of the Applicant's establishment under its license. (Tr. 3/12/03 at 68.) Mr. Birch testified that he understood that the Applicant served customers food on the back patio. (Tr. 3/12/03 at 68-69, 73.) He believed that an ABC establishment selling food and not alcoholic beverages in a patio area would be difficult to enforce. (Tr. 3/12/03 at 68-69.) Mr. Birch further testified that the Applicant exceeded its permitted number of seats on its sidewalk café. (Tr. 3/12/03 at 69, 72.)

7. Karen Tammany Cruse is a resident of the District of Columbia and is on the Board of Directors of The Citizens Association of Georgetown. (Tr. 3/12/03 at 83.) With respect to the sidewalk café, Ms. Cruse testified that after the Applicant's request for a substantial change to add a sidewalk café was granted, the Applicant exceeded the number of seats that were permitted. (Tr. 3/12/03 at 85.) She testified that the Applicant was permitted to have twenty-eight (28) seats in the sidewalk café. (Tr. 3/12/03 at 85.) Ms. Cruse further testified that the Applicant increased its sidewalk café seating to forty-

two (42) without Board approval and would increase and decrease the number from time to time. (Tr. 3/12/03 at 86-87.)

8. With respect to the summer garden, Ms. Cruse testified that the Applicant had not filed for a substantial change to permit seating on the rear of the establishment. (Tr. 3/12/03 at 89.) Ms. Cruse testified that she observed patrons dining on the back patio of the Applicant's establishment. (Tr. 3/12/03 at 89.)

9. Elizabeth Dalton Emes is a resident of the District of Columbia and the backyard of her home at 3226 N Street, N.W., backs up to the Applicant's back patio. (Tr. 3/12/03 at 109-110.) With respect to operation of the summer garden, Ms. Emes testified that in 1997 the Applicant informed her that the Applicant's establishment desired to provide dining on the back patio of the Applicant's establishment and that the establishment started to use the back patio in 1997. (Tr. 3/12/03 at 136-137.) Ms. Emes testified that she communicated to the Applicant that she did not agree with the Applicant serving customers on its back patio. (Tr. 3/12/03 at 136-137.) She also testified that the Applicant did not operate on the back patio in the summer of 1998 after being fined by the ABC Board, but resumed use of the back patio in the spring of 2001. (Tr. 3/12/03 at 137-138.)

10. With respect to the establishment's sidewalk café, Ms. Emes testified that she observed between thirty (30) and forty (40) people being served on the sidewalk café in the summer and fall of 2002. (Tr. 3/12/02 at 142-143, 146-147.)

### CONCLUSIONS OF LAW

11. The question of law presented to the Board in this instance is whether the Board possesses the authority to regulate an adjacent interior or exterior area used by an ABC-licensed establishment when alcoholic beverages are not being sold, served, or consumed in that adjacent exterior or interior area. The Board concludes based upon D.C. Official Code §§ 25-402, 25-404, and 25-762 that there are certain changes made to the operations of an ABC establishment by a licensee after the initial granting of an ABC license to a licensee, including an increase in the occupancy or interior space of a licensed establishment or expanding the operation of the licensed establishment to add permanent exterior public or private space or summer gardens, which the District of Columbia Council has determined require Board approval before the change is made by the licensee. Specifically, D.C. Official Code § 25-762(b) lists eighteen (18) types of changes that require approval from the Board before they may be made by an ABC licensee and are considered under this provision to be potentially of concern to residents surrounding the establishment. In this particular instance, the Board notes that D.C. Official Code § 25-762(b)(2) requires an ABC establishment to obtain Board approval prior to expanding "the operation of the licensed establishment to allow for permanent use of exterior public or private space or summer gardens." Additionally, the Board notes that pursuant to D.C. Official Code § 25-762(b)(1), an increase in the occupancy of a licensed establishment requires Board approval.

As a result, the Board finds that D.C. Official Code § 25-762(b) requires an ABC establishment to obtain Board approval prior to expanding the operation of the establishment by adding exterior public or private space or summer gardens and/or increasing its occupancy.

It is worth noting that under D.C. Official Code § 25-402(a)(7), an Applicant for an ABC license is provided an initial opportunity to discuss the nature of the establishment's proposed operation with the Board. Specifically D.C. Official Code § 25-402(a)(7) requires an Applicant to provide the Board with a detailed description that includes:

“(A) The type of food to be offered, if any; (B) The type of entertainment to be offered, if any; (C) The goods and services to be offered for sale, in addition to alcoholic beverages, if any; (D) The hours during which the establishment plans to sell alcoholic beverages; if any; (E) If different . . . the hours during which the establishment plans to remain open for the sale of goods or services other than alcoholic beverages . . .” (Emphasis Added.).

Additionally, D.C. Official Code § 25-402(a)(6), requires an Applicant to set forth the “size and design of the establishment for which the license is sought.” It is essential that the statutory information required of the Applicant by D.C. Official Code § 25-402 be included on an Applicant's initial application and that the included information be correct. Specifically, the above factors, which help to define the overall operations of an establishment are part of the Board's, and in many cases, residents, ANC's, and community associations of the District of Columbia consideration in determining whether an ABC license is appropriate for a particular establishment. Whether or not an ABC establishment intends to increase its occupancy – without alcoholic beverage service – by adding another floor with dancing and live music or increase its occupancy by fifty percent by adding exterior outdoor space – which consists of outdoor “non-alcoholic” seats for food service in addition to other proposed or previously approved outdoor alcoholic beverage seats – is information the Board needs to be aware of and consider prior to approving the ABC license application and would be of potential concern to residents as set forth in D.C. Official Code §§ 25-404 and 25-762. As a result, an Applicant needs Board approval pursuant to D.C. Official Code §§ 25-404 and 25-762 to amend its ABC license for the types of substantial changes listed in D.C. Official Code § 25-762(b) prior to their implementation.

12. The Applicant, in its legal brief, argues that despite the clear language of D.C. Official Code § 25-762, the Board does not have the authority to regulate those portions of a Board licensed establishment where alcoholic beverages are not served. The Applicant asserts that since it possesses a DCRA certificate of occupancy to operate on its rear patio and does not serve alcoholic beverages on the rear patio, the Board does not have the authority to regulate the Applicant's use of the rear patio as a result of The District of Columbia Court of Appeals decision in Kopff v. District of Columbia Alcoholic Beverage Control Board, 413 A.2d 152 (D.C. 1980). In Kopff, The District of Columbia Court of Appeals held:

“[I]f the Board had gone behind the certificate of occupancy to ascertain whether or not it was properly issued, the Board would have been acting in effect as a court of appeals over other coordinate administrative departments. The Board has neither the jurisdiction nor the expertise to review compliance with safety requirements in such a manner. ...”

413 A.2d at 154. The Applicant asserts that as a result of the Kopff decision, the issuance of a certificate of occupancy by DCRA is all that is required for the use of its rear patio for the service of food and non-alcoholic beverages. We disagree.

13. The Applicant is correct, as stated in Kopff, that this Board does not possess the authority to look behind the validity of a certificate of occupancy issued by DCRA for the Applicant's establishment. In this case, however, the Board is not questioning the validity of a certificate of occupancy from DCRA issued for its rear patio (summer garden). Rather, as noted in D.C. Official Code § 25-762(b), obtaining a certificate of occupancy from DCRA is not the only regulatory requirement that an ABC establishment must meet in order to operate an outdoor summer garden. In fact, the Board notes that a valid certificate of occupancy would be required to be obtained by the Applicant prior to the Board approving an Applicant's request to obtain an outdoor summer garden or increase its occupancy. The requirement that a business be in compliance with the legal requirements of several District of Columbia agencies to operate is a common occurrence in District of Columbia government. In this case, the Applicant is a Board licensed establishment, and as such, the establishment is subject to the ABC laws and regulations set forth in Title 25 of the D.C. Official Code and Title 23 of the District of Columbia Municipal Regulations, in addition to any legal requirements the Applicant must follow to be in compliance with DCRA.

14. The Applicant in its brief also raises the issue of whether the Board's decision in this matter is inconsistent with prior Board practice. Specifically, the Applicant points to the establishment being charged and fined for the unapproved service of alcoholic beverages in 1998 and a charge brought by the District of Columbia's Office of the Corporation Counsel on December 12, 2001 that the establishment served alcoholic beverages without Board approval on the back patio. The Board, however, does not find its ruling in those two cases to be inconsistent with this case. Specifically, at a show cause hearing, the Board is required to make a decision based upon the charges brought before it. In those two cases, the Board dealt with whether the establishment was improperly selling alcoholic beverages in an unlicensed area rather than whether the establishment had either improperly increased its certificate of occupancy or added an exterior summer garden without alcoholic beverage sales. More importantly, the Board has consistently required Applicants under oath to fill out the questions on their license application, including those stated above, and has required licensees to follow the terms of their initial approved license applications absent approval by the Board of a substantial change request made by the licensee.

15. The second issue before the Board is whether the Applicant's current use of a summer garden and/or sidewalk café is in violation of the terms of its current ABC license. As stated above, pursuant to D.C. Official Code §§ 25-404 and 25-762 (2001), ABC establishments are precluded from making one of the eighteen types of substantial changes in operation set forth in D.C. Official Code § 25-762(b) without first obtaining Board approval. In this case, a review of the Applicant's February 7, 1997 supplemental application file indicates that the Applicant stated that it would not have an outdoor summer garden for the service of either food or alcoholic beverages and that its certificate of occupancy would be 160. Based upon the establishment's application, the Applicant was granted an ABC license. It is undisputed that the Applicant has not been approved for the use of a summer garden. However, the testimony of Jill Kitcharoen, Thomas Birch, Karen Cruse, and Elizabeth Emes, revealed that the Applicant has periodically operated a summer garden on its rear patio and as recent as 2002 the summer garden has been used for the service of food. Ms. Kitcharoen, Ms. Cruse, Mr. Birch and Ms. Emes testified that the Applicant expanded its seating in the front and rear of the establishment and that the Applicant provided food service on the rear patio of its establishment. Ms. Kitcharoen testified that the Applicant applied for and received a DCRA certificate of occupancy for seventy-six (76) on the rear of the Applicant's establishment and that the Applicant has used the space for food service. The Applicant's March 5, 2002 certificate of occupancy also provides for twenty-four (24) summer garden seats in the front. As stated above, the Board finds that D.C. Official Code § 25-762, prohibits ABC licensed establishments from opening new outdoor summer gardens or sidewalk cafes without first obtaining Board approval through the substantial change process. As a result, the Board concludes that the Applicant does not have Board approval to operate a summer garden of seventy-six (76) seats on its back patio or a summer garden of twenty-four (24) seats in the front and that the additional increase in occupancy as reflected in the DCRA certificate of occupancy represents a substantial change in operations that is of potential concern to residents pursuant to D.C. Official Code § 25-762(a). Thus, the Board finds that the requests filed by the Applicant for use of both the front and rear summer garden areas should be placarded by the Board for public comment.

16. The Board concludes, based upon its files and the testimony of Jill Kitcharoen, Thomas Birch, and Karen Cruse that the Applicant is approved for twenty-eight (28) seats, to include the service of alcoholic beverages, on the front of the establishment in the form of a sidewalk café. The Board finds that the Applicant's request to increase the occupancy of its sidewalk café from twenty-eight (28) to forty-four (44) seats should be placarded by the Board for public comment.

17. The Board will continue any decision on the Applicant's renewal application pending resolution of the establishment's substantial change request to expand its occupancy by adding a summer garden of seventy-six (76) seats on the rear patio and a summer garden in the front of twenty-four (24) seats. This substantial change request also includes the Applicant's request to increase the occupancy of its sidewalk café currently approved by the Board for twenty-eight (28) seats to forty-four (44) seats. In making this decision, the

Board notes that the primary objections of the Protestants focus on the use of outdoor seating by the establishment rather than the indoor operations of the establishment.

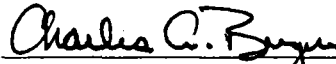
18. The Board also adopts as a basis for its decision, the reasons set forth by the Board at the April 30, 2003 hearing (copy attached).

**THEREFORE**, it is hereby **ORDERED** on this 14<sup>th</sup> day of May 2003, that the Protest of the renewal of the Retailer's Class "CR" license held by Bangkok Bistro, Inc. t/a Bangkok Bistro, 3251 Prospect Street, N.W., Washington, D.C., be and the same is hereby, **CONTINUED** until such time as residents have been accorded the opportunity to comment on the Applicant's request for a substantial change in operations to operate a summer garden with seventy-six (76) seats on the back patio and a summer garden with twenty-four (24) seats on the front as well as the Applicant's request to increase the occupancy of its sidewalk café from twenty-eight (28) seats to forty-four (44) seats.

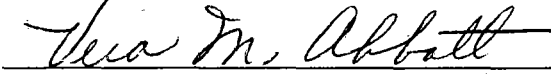
It is **FURTHER ORDERED** that the Applicant shall:

1. Discontinue immediately restaurant operations involving either food or alcoholic beverage service to customers on: (1) the summer garden with a certificate of occupancy of seventy-six (76) seats located on the rear back patio of the licensed premises and (2) the summer garden with a certificate of occupancy of twenty-four (24) seats located in the front of the establishment;
2. Restrict the number of patrons served either food or alcoholic beverages on the establishment's sidewalk café to twenty-eight (28) seats; and
3. The Applicant must post placards provided by ABRA in a conspicuous area in front of licensed premises which gives notice to the public that the Applicant has applied for Board approval of a substantial change in operations which includes: (1) a summer garden with seventy-six (76) seats for the back patio; (2) a summer garden with twenty-four (24) seats in the front of the establishment; and (3) an increase in the occupancy of the establishment's sidewalk café, currently approved by the Board for twenty-eight (28) seats to forty-four (44) seats.

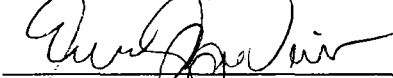
District of Columbia  
Alcoholic Beverage Control Board



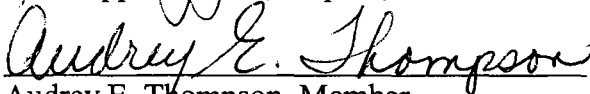
Charles A. Burger, Interim Chairperson



Vera M. Abbott, Member



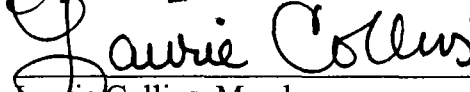
Ellen Oppenheimer, Esquire, Member



Audrey E. Thompson, Member



Judy A. Moy, Member



Laurie Collins, Member

Pursuant to 23 DCMR § 1619.1 (June 1997), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1619.1 (June 1997) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).

The Eagle Academy Public Charter School  
770 M Street, S.E.  
Washington, D.C. 20003

NOTICE FOR PROPOSALS FOR  
EARLY CHILDHOOD CLASSROOM FURNITURE

Eagle Academy Public Charter School, in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995, solicits proposals to furnish 7 classrooms for students ages 3, 4, and Kindergarten. The furniture shall consist of six work tables, 18 appropriately sized chairs, three computer tables, 18, 20, and 22 cubbies per classroom, wall coat racks and shelves; 2 book cases per classroom – 3' high by 14" deep by 6' length, and a teacher desk with chair.

Providers must state their credentials and provide appropriate references. No proposal will be considered without an estimated cost.

Proposals shall be received no later than 5:00 P.M. June 27, 2003. Proposals should be addressed to Cassandra Pinkney, Executive Director 10904 Atwell Avenue, Bowie, MD 20720.

The Eagle Academy Public Charter School  
770 M Street, S.E.  
Washington, D.C. 20003

NOTICE: FOR PROPOSALS TO CATER  
SCHOOL BREAKFAST AND LUNCH PROGRAM

Eagle Academy Public Charter School, in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995, solicits proposals to provide 21 classroom computers, three desktop computers with monitors, a laptop computer, an office server for five computers, and a DSL line for 7 classrooms of students ages 3, 4, and Kindergarten. The operating systems may be Windows OS or Apple OS. The equipment must be appropriate for use in the classroom. A separate quote must be provided for installation services.

Providers must state their credentials, provide appropriate references and suggested configurations of equipment and installation. No proposal will be considered without an estimated cost.

Proposals shall be received no later than 5:00 P.M. June 20, 2003. Proposals should be addressed to Cassandra Pinkney, Executive Director 10904 Atwell Avenue, Bowie, MD 20720.

**BOARD OF ELECTIONS AND ETHICS**  
**CERTIFICATION OF ANC/SMD VACANCIES**

The District of Columbia Board of Elections and Ethics hereby gives notice that there are vacancies in ten (10) Advisory Neighborhood Commission offices, certified pursuant to D.C. Code §1-309.06(d)(2) [(2001 Ed.)].

**VACANT:**            **3D07, 3D08**  
                              **5C10, 5C11**  
                              **6B11**  
                              **8B03, 8C05, 8C06**

Petition Circulation Period: **Wednesday, May 28, 2003 thru Tuesday, June 17, 2003**  
Petition Challenge Period: **Friday, June 20, 2003 thru Thursday, June 26, 2003**

---

**VACANT:**            **4A05**  
                              **8E01**

Petition Circulation Period: **Tuesday, June 3, 2003 thru Monday, June 23, 2003**  
Petition Challenge Period: **Thursday, June 26, 2003 thru Wednesday, July 2, 2003**

---

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

**D.C. Board of Elections and Ethics**  
**441 - 4<sup>th</sup> Street, NW, Room 250N**

For more information, the public may call 727-2525.

**Government of the District of Columbia  
Department of Health  
Environmental Health Administration  
Bureau of Environmental Quality  
Air Quality Division**

**NOTICE OF PERMIT ACTION**

Notice is hereby given that, pursuant to 40 CFR Part 51.61, D.C. Code §1.1506, and 20 DCMR § 206, the Air Quality Division (AQD) of the Environmental Health Administration located at 51 N Street, N.E., Washington, DC. intends to issue a permit to operate three 9.0 million BTU per hour natural gas firing Cleaver Brooks boilers and two Caterpillar 1250 KW emergency generators to The George Washington University Hospital located at 900 23<sup>rd</sup> Street, N.W., in the District of Columbia.

The application for the operation of boilers is available for public inspection at AQD and copies may be made between the hours of 8:00 am. and 4:45:00 pm Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any to Ola Tajudeen, at (202) 535-2998.

Interested persons may submit written comments within 30 days of publication of this notice. Comments should be addressed to Stanley C. Tracey, Chief, Engineering and Planning Branch, Air Quality Division, Environmental Health Administration, 51 N Street, N.E., Washington D.C. 20002. No written comments postmarked after July 13, 2003 will be accepted. The written comments must also include the person's name, telephone number, affiliation, if any mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit. For more information, please contact Ola Tajudeen, at (202) 535-2998.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH**

**NOTICE OF PERMIT ACTION**

Notice is hereby given that, pursuant to 40 CFR Part 51.61, D.C. Code § 1.1506, and 20 DCMR § 206, the Air Quality Division of the Environmental Health Administration located at 51 N Street, N.E., Washington, D.C., will held a public hearing on the draft Title V permit for Lane Construction Corporation located at 60 P Street, S.E. on July 9, 2003.

The fact sheet, summary sheet and draft Title V permit are available for public review. Copies of these documents may be made at the offices of the EHA, 51 N Street, N.E., Room 6051, between 8:15 A.M. and 4:45 P.M. Monday through Friday, and at the following branches of the D.C. Public Library: 901 G Street, NW; Connecticut Avenue & McKinley Street, NW; 37<sup>th</sup> Street, & Alabama Avenue, SE; Wisconsin Avenue & R Street, NW; 18<sup>th</sup> Street, & Rhode Island Avenue, NE. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Abraham T. Hagos.

Interested persons may submit written comments within 30 days of publication of this notice. Comments should be addressed to Stanley C. Tracey, Chief, Engineering and Planning Branch, Air Quality Division, Environmental Health Administration, 51 N Street, N.E., Washington, D.C. 20002. No written comments postmarked after July 9, 2003 will be accepted. The written comments must also include the person's name, telephone number, affiliation, if any, and mailing address, and must contain a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit. For more information, please contact Abraham T. Hagos at (202) 535-1354.

**Government of the District of Columbia**  
**Department of Health**  
**Environmental Health Administration**  
**Bureau of Environmental Quality**  
**Air Quality Division**

**NOTICE OF PERMIT ACTION**

Notice is hereby given that, pursuant to 40 CFR Part 51.61, D.C. Code §1.1506, and 20 DCMR § 206, the Air Quality Division (AQD) of the Environmental Health Administration located at 51 N Street, N.E., Washington, DC. intends to issue a permit to construct three 5.72 million BTU per hour natural gas firing boilers to Renaissance Mayflower Hotel located at 1127 Connecticut Avenue, N.W., in the District of Columbia.

The application for construction of the boilers is available for public inspection at AQD and copies may be made between the hours of 8:00 am. and 4:45:00 pm Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any to Ola Tajudeen, at (202) 535-2998.

Interested persons may submit written comments within 30 days of publication of this notice. Comments should be addressed to Stanley C. Tracey, Chief, Engineering and Planning Branch, Air Quality Division, Environmental Health Administration, 51 N Street, N.E., Washington D.C. 20002. No written comments postmarked after July 13, 2003 will be accepted. The written comments must also include the person's name, telephone number, affiliation, if any mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit. For more information, please contact Ola Tajudeen, at (202) 535-2998.

**Government of the District of Columbia**  
**Department of Health**  
**Environmental Health Administration**  
**Bureau of Environmental Quality**  
**Air Quality Division**

**NOTICE OF PERMIT ACTION**

Notice is hereby given that, pursuant to 40 CFR Part 51.61, D.C. Code §1.1506, and 20 DCMR § 206, the Air Quality Division (AQD) of the Environmental Health Administration located at 51 N Street, N.E., Washington, DC. intends to issue a permit to operate two water heaters; one (1) 5.7 million BTU per hour natural gas firing PVI Industries and one (1) 0.6 million BTU per hour natural gas firing PVI Industries to The University of the District of Columbia, Building #47 located at 4200 Connecticut Avenue, NW., in the District of Columbia.

The application for the operation of boilers is available for public inspection at AQD and copies may be made between the hours of 8:00 am. and 4:45:00 pm Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any to John Nwoke, at (202) 724-7778.

Interested persons may submit written comments within 30 days of publication of this notice. Comments should be addressed to Stanley C. Tracey, Chief, Engineering and Planning Branch, Air Quality Division, Environmental Health Administration, 51 N Street, N.E., Washington D.C. 20002. No written comments postmarked after July 13, 2003 will be accepted. The written comments must also include the person's name, telephone number, affiliation, if any mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit. For more information, please contact John Nwoke, at (202) 724-7778.

**Office of the Director of the Department of Mental Health****Public Notice of Funding Availability**

The District of Columbia, Office of the Director of the Department of Mental Health, announces the availability of grant funding for the provision of a Youth Diversion Coordination Program.

Qualified non-profit, community-based organizations are invited to submit applications for the following award:

**Youth Diversion Coordination Program**

The target population for the purpose of this NOFA will be children and youth identified for diversion by the DC Department of Public Schools, the Metropolitan Police Department, DC Superior Court Social Services, or the DC Family Court.

One award will be made for the period July 1, 2003 to October 1, 2003 for infrastructure development and capacity expansion to meet the requirements of the NOFA.. Grant funds may be renewed predicated on funding availability.

The NOFA will be available on June 13, 2003 and may be picked up at the reception desk of the following office between 9:00 am and 4:30 pm:

Office of the Department of Mental Health  
64 New York Avenue, N.E.  
Fourth Floor  
Washington, D.C. 20002

(Union Station Metro Stop)

**The deadline for submission of applications is 4:30 p.m. on June 30, 2003.**

For additional questions regarding this NOFA contact:

Andrea Weisman, Ph.D. Administrator  
Alternative Pathways  
Department of Mental Health  
(202) 671-2898  
(202) 673-1933 (fax)  
andrea.weisman@dc.gov

## **NOTICE OF FUNDS AVAILABILITY**

### **GOVERNMENT OF THE DISTRICT OF COLUMBIA DEPARTMENT OF MENTAL HEALTH**

#### **Youth Diversion Coordination Program**

**DMH invites the submission of applications for grant funding for the provision of a Youth Diversion Coordination Program in order to provide intake coordination, development of Comprehensive Diversion Plans (CDP), linkage and liaison functions, and tracking of diversion participation and CDP implementation**

**Announcement Date: June 13, 2003  
RFP Release Date: June 13, 2003**

**Application Submission Deadline: June 30, 2003.**

**LATE APPLICATIONS WILL NOT BE FORWARDED FOR REVIEW**

In accordance with the DC Human Rights Act of 1977, as amended, DC Official Code section 2.1401.01 et seq. ("the Act"), the District of Columbia does not discriminate on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business.

## NOTICE

### PRE-APPLICATION CONFERENCE

**WHEN:** June 18, 2003

**WHERE:** Department of Mental Health (DMH)  
64 New York Avenue, N.E.  
Fourth Floor  
Washington, D.C. 20002

**TIME:** 11 a.m. – 12 p.m.

**CONTACT PERSON:** Andrea Weisman, Ph.D.  
Department of Mental Health  
64 New York Avenue, N.E.  
Washington, D.C. 20002  
(202) 671-2898

**SECTION I        GENERAL INFORMATION****Introduction**

A component of the Department of Mental Health's (DMH) initiative, Alternative Pathways, is the prevention of youth with un-addressed mental health and/or substance abuse disorders from entering the juvenile justice system in order to access services and supports. To accomplish this goal, DMH will provide screening of co-occurring disorders (mental health and/or substance abuse) for all youth apprehended by the Metropolitan Police Department (MPD) at the first precinct upon their apprehension. DMH screeners will determine the level of care required to address presenting concerns. Youth requiring acute psychiatric hospitalization or inpatient detoxification will be triaged at this earliest point. Screeners will recommend and establish linkages for youth and families to appropriate services in the event youth are released by MPD<sup>1</sup>

Youth determined to be eligible for release with conditions, including participation in a diversion program, by MPD, Court Social Services (CSS), Office of Corporation Counsel (OCC), or the court, is one of this RFP's target populations. The second population of concern is youth identified by the Department of Education (DCPS) through their truancy centers for diversion as prevention against potential prosecution on charges of truancy.

Results of DMH screening with attendant recommendations for home and/or community-based services and supports will be forwarded to the Youth Diversion Coordination Program's Intake Supervisor for potential incorporation in the development of youths' individual Comprehensive Diversion Plans.

**Rationale**

Youth and their families participating in diversion may have a range of needs including housing, employment, education, mentoring, tutoring, medical, mental health and substance abuse services and supports, among others. Existing diversion programs may provide some of these services, however in many instances the breadth of services and supports that may have been identified at the point youth are diverted are frequently not provided and rarely does this become an entry point for families to receive services and supports. And none of this is tracked. Currently, no data exists to inform the District of the relationship between youths' participation in diversion programs and their likelihood of either further prosecution (as in the case of truants) or re-arrest<sup>2</sup>

---

<sup>1</sup> Screeners will ensure the communication of their findings regarding youths' level of care requirements to CSS, YSA, and others with an immediate need-to-know to ensure continuity of care.

<sup>2</sup> Data is currently being compiled by the Front End Assessment Team (FEAT), the mayorally mandated interagency task force working on diversion strategies and issues.

Youth, who are diverted through CSS or the court, have primary case management through CSS probation. However, those diverted by MPD or DCPS have no case management and so there is no oversight responsibility for implementation of a diversion plan.

As part of its commitment to improving coordination and provision of services to diverted youth, DMH seeks to pilot an innovative community-based, youth focused, family-centered and strength-based program to coordinate and oversee the activities, services and involvements of youth designated for diversion programs. The intention of the program is to facilitate the engagement of youth and their families in services and supports at this earliest opportunity so as to prevent their further penetration into the juvenile justice system and ultimately, the criminal justice system.

### **The Vision**

DMH envisions a program with the following components and competencies:

- **Intake Coordination**: the program will conduct an intake assessment that will include review of all referring documents and recommended services and supports. As indicated, it will include communication with existing agency- and community-based service providers. It will establish both peer and family driven venues within which additional services and supports may be identified for inclusion in a **Comprehensive Diversion Plan**.
- **Comprehensive Diversion Plans (CDP)** will evidence an integrated understanding of the strengths and needs of the youth and family in the following manner:
  - ❖ **Strength-Enhancement Activities**  
These shall be considered activities that promote the youth's strengths, interests, self-esteem, and sense of connectedness to family, school and community. Activities may include participation in traditional or non-traditional, agency or community-based services and supports such as mentoring, music lessons (etc.), community service, individual and/or family therapy
  - ❖ **Need-Reduction Activities**  
These shall be considered activities and/or commitments that reduce the likelihood that the youth will continue to engage in the offending behavior. This will require a thorough-going understanding of why the behavior occurred; a comprehensive understanding of the various social, emotional, familial, medical, etc. reasons the youth engaged in the behavior that brought him/her to the attention of the authorities.

Activities may include traditional or non-traditional services and supports, may be agency or community-based and may include, but not be limited to, insurance of safety, mental health and/or medical services and

supports, structured behavioral contracting, participation in specific diversion programs, curfews, drug testing, reporting requirements, etc. It should be noted that many activities overlap the intentions of both strength-enhancement and risk reduction. It will be the capacity for a nuanced understanding of the youth and family that distinguishes these on the CDP.

While DMH looks forward to the vendor's creativity in bringing these concepts to life, preliminarily, DMH would like to see the Comprehensive Diversion Plan specify activities that the youth agrees to, the family agrees to, and the providers (agency and community) agree to. In this way a covenant may be established.

- **Liaison and Tracking** are additional critical components of the DMH vision for this pilot program.

- ❖ **Liaison Functions:** Upon completion of the CDP, the program will have the responsibility for ensuring linkages to the services and activities identified on the plan. These services and activities may be traditional or non-traditional. The program will facilitate linkage to traditional services such as mental health services by their communication with the DMH ACCESS Helpline to ensure attachment to a DMH core service agency, or to the Multi-Agency Planning Team Interagency Coordinator for a MAPT review. Linkage will be similarly established for services and supports required from other agencies.

**It is envisioned that the program will provide a limited continuous liaison function for youth with whom it has already had contact, and during the pendency of the youth's diversion status. The program may provide assistance to stakeholders in identifying avenues for remedy of plans that are in jeopardy of unraveling. It is not, however, envisioned that the program will carry continuous case management responsibility for youth/families. For youth on probation or consent decrees, primary case management responsibility will continue to reside with CSS. DCPS youth with identified abuse or neglect, mental health, substance abuse or other agency-eligible conditions or circumstances, will be linked to DMH core service agencies that will be responsible for case management.**

- ❖ **Tracking Functions:** The program will provide a tracking function that includes establishing procedures for receiving information periodically from primary case managers about the continuing engagement of youth in their diversion plans. In addition to tracking information specific to individual youth, the program will track information in aggregated form to track trends and patterns. We seek to develop the capacity to track outcomes for youth according to the diversion programs and services accessed during the period of diversion.

**Eligible Organizations/Entities**

Respondents are limited to non-profit agencies. DMH seeks a respondent with demonstrable current organizational capacity to take the vision described in this NOFA and "bring it to life." This includes evidence of understanding and experience in implementing a program that evidences the strength-based, youth-centered, family-focused approach described here. In addition, the organization should provide evidence of technological capacity to organize the required data elements to be able to produce both the requisite reports and tracking documents. It will clearly enhance the respondent's desirability if they can demonstrate that their technological capacity has the potential for facilitating and expanding upon the ideas offered here.

We seek respondents with the current capacity to provide the particular services described in this NOFA including, intake coordination, development of Comprehensive Diversion Plans, liaison and tracking functions, and report preparation and distribution. We will entertain applications where capacity expansion is necessary to accomplish these tasks, as long as the respondent articulates a strategy for its resolution that includes a timeline.

**Priority Points**

Under separate provisions, DMH has established a mechanism to involve the Collaboratives who identify, corral, and make accessible parent advocates, community providers and volunteers to assist families residing in the Wards in which the Collaborative operates. DMH is interested in strategies that incorporate this array of non-traditional (i.e., non-Medicaid reimbursable) services and supports and make them more available to youth and families through DMH's treatment planning processes. This is a priority strategy for Child and Youth Services Branch of DMH as evidenced by its inclusion in the DC CINGS, System of Care a locus for some of the reinvestment dollars realized on the prevention of costly residential placements.

Priority Points will be awarded to organizations that can demonstrate a creative approach to integrating the diversion intake, coordination, liaison and tracking functions described here with a structured approach to working with the community Collaboratives. The goal would be to access and track use of the Collaboratives' resources as integral to Comprehensive Diversion Plans.

**Award Period**

The grant funds for this Youth Diversion Coordination Program will be awarded for a period not to exceed September 30, 2003. Further funding would be contingent on availability.

**Funding Amounts**

The maximum amount of grant funds available for this Youth Diversion Coordination Program is two hundred thousand dollars (\$200,000.00).

**Contact Person**

Inquiries about this available grant funding or about the proposed activities and requirements can be made by contacting Andrea Weisman, Administrator, Alternative Pathways, Department of Mental Health, 64 New York Avenue, NE, Washington, DC, 20002, phone: (202) 671-2898, fax: (202) 673-1933, email: andrea.weisman@dc.gov (email address).

**Pre-Application Conference**

Prospective applicants are strongly encouraged to attend the pre-application conference scheduled to be held on June 18, 2003 from 11:00am -12:00pm at the Department of Mental Health, 64 New York Avenue, NE, Fourth Floor, Washington, D.C. 20002.

**SECTION II          SUBMISSION OF APPLICATIONS****Application Identification**

Each submission must contain a title page containing contact information regarding the organization name, address and contact person. by name, title, address, telephone number, and fax number.

**Application Submission Date and Time**

Each respondent to this RFP shall submit an original and five copies of the proposal in a sealed envelope marked **“Response to NOFA for Youth Diversion Coordination Program.”** The envelope shall be hand delivered or mailed to the Director of the Department of Mental Health, 64 New York Avenue, N.E., Fourth Floor, Washington, D.C., 20002.

The proposal must be received at the above address not later than 4:30 p.m. on June 30, 2003.

Proposals may be sent by registered or certified mail or by express mail, at least three days in advance of the closing date with a receipt requested. Proposals may not be faxed or emailed. Proposals received after the deadline hour and date may be accepted only if the Department of Mental Health determines that the late receipt at the location specified was caused by mishandling of the proposal by the District Government after receipt or that the original receipt in case of registered or certified or express mail shows that the proposal was mailed at least three days in advance of the closing date. Regardless of the

reason, no proposal shall be accepted later than two (2) business days after the closing date.

### **SECTION III            PROGRAM AND ADMINISTRATIVE REQUIREMENTS**

#### **Use of Funds**

The Department of Mental Health is interested in piloting a diversion intake program that will provide improved access to and coordination of services for diverted youth and their families. In addition, the pilot seeks to generate data and track outcomes for youth participating in a variety of diversion services and activities.

These funds may be used for:

- (a) Capacity Expansion including:
  - 1. Personnel
  - 2. Technology
- (b) Training
- (c) Infrastructure Development
- (d) Operational Costs
- (e) Evaluation

#### **Program Staff Requirements**

Licensed social workers, LPCs, or Rns or the equivalent at a staffing level sufficient to perform all major activities associated with the requirements of intake coordination, the production of Comprehensive Diversion Plans, provide the linkage and liaison to services, and establish and maintain a tracking system. They should possess at least 2-3 years working with youth in the target populations, including knowledge of youth development and experience in working with youth with mental health and/or substance abuse disorders; with youth who have experienced abuse, trauma, neglect.

The program must have current organized youth capacity to develop a plan for accomplishing youth-driven Comprehensive Diversion Plans. The development of the Comprehensive Diversion Plans (to be distinguished from their *production*), will be the responsibility of the youth and family under the direction of qualified professionals.

The organization seeking to house this program must have a demonstrated history of innovative program development and implementation with youth at risk of involvement in the juvenile justice system in the District of Columbia. The vendor is expected to be able to demonstrate organizational capacity to support the work of the program, including space, equipment, and administrative infrastructure. It will be expected that the staff of the organization have experience in working with truant youth, youth have experienced trauma, violence, substance use/abuse, and who have mental health or behavioral disorders, among other issues with a high correlation.

The Youth Diversion Coordination Program Director must be on site and/or accessible via communicative modems around the clock for crisis and emergency interventions.

Within the first month of employment, it is strongly encouraged that all new staff members receive training in confidentiality, cultural competence, universal precautions, and documentation standards.

### **Performance Standards and Quality Assurance**

The successful applicant must agree to the following:

That youth will participate in every operational aspect of the program, including policy issues and decisions.

Youth and family evaluations of services and supports – traditional and non-traditional -- provided throughout the diversion period should be examined periodically,

Youth Diversion Coordination Program services are accessible and located in an appropriate, comfortable and attractive setting. The provider shall maintain hours of operation at a minimum of Monday through Friday from 8:30 a.m. to 5:00 p.m., and routinely offer services after hours and on weekends.

Each consumer's file or record must contain the following information:

- (a) A signed consent by youth for their participation in the program.
- (b) Demographic information that identifies the youth by name, address, telephone number; date of birth; social security number; emergency contact information; physical concerns or limitations; medications being taken (and any known allergies); referring agency, any/all insurance numbers; and copies of any court orders pertaining to guardianship, system involvement, attorney information (if applicable), etc.;
- (c) A signed Comprehensive Diversion Plan that includes an assessment of strengths and needs in relevant life domains that the CDP plans to target; The intake and development of the CDP is to be completed within 14 working days of referral to the program. .
- (d) Monthly progress/summary notes that detail the youth's participation in recommended activities;
- (e) Any other information necessary for the coordination and tracking of the youth's CDP.

### **Reports**

During the pilot, the Youth Diversion Coordination Program shall submit reports to DMH on a monthly that include indicators such as: number of youth referred, referring agencies, number of completed CDPs, and other information of both a quantitative and qualitative nature to be agreed upon with the selected vendor. DMH will expect a final report within 14 working days of the close of the pilot period (September 30, 2003).

**Records**

All records must be protected according to applicable rules and regulations governing confidentiality of client information.

The agency must retain a copy of all financial records, books, documents and other evidence pertaining to costs and expenses to the extent and in such detail as will properly reflect all costs, direct and indirect; labor; materials; equipment; supplies and other items for a period of three years beyond the termination of the funding agreement and any extensions. However, in the case of an audit or investigation, records shall be retained until the review has been completed.

**Monitoring and Evaluation**

The Department of Mental Health will monitor the Youth Diversion Coordination Program activities on a continuing basis by reviewing data, meeting with agency staff and providing training and technical assistance as agreed upon by the parties.

**SECTION IV      GENERAL PROVISIONS****Audits**

The Department of Mental Health retains the right to conduct audits, as determined to be necessary.

**Nondiscrimination in the Delivery of Services**

In its provision of services/supports, the agency must not discriminate on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income or place of residence or business. Furthermore, the agency must demonstrate cultural competence.

**Applicant Responsibilities**

An agency selected for the provision of the Youth Diversion Program services must be knowledgeable of and committed to the principles of the State Advisory Group (SAG) philosophy and goals, as it pertains the juvenile justice system. The following scope of work will be the responsibility of the applicant:

- 1) The agency shall operate a Youth Diversion Coordination Program for a period not to exceed September 30, 2003; said length of agreement.

- 2) The agency shall provide Youth Diversion Coordination Program services in the District of Columbia in a manner consistent with the specific terms of this Notice.
- 3) The agency shall comply with the eligibility requirements specified in this Notice.
- 4) The agency shall work in collaboration and in partnership with each youth to promote comprehensive, effective diversion intake, develop service plans, and linkage to identified services and supports.

## **SECTION VI          REVIEW AND SCORING OF APPLICATIONS**

### **Scoring Criteria**

Proposals will be evaluated according to the following criteria:

- 1) Articulation of the agency's understanding and commitment to the principles and practices surrounding the need to develop a strength-based, youth-centered, family-focused, culturally competent Youth Diversion Coordination Program. (20 points maximum)
- 2) Description of the agency, its experience and its achievements in working with the target population. (15 points maximum)
- 3) Administrative and Fiscal Capacity. (15 points maximum)
- 4) A proposed budget. (10 points maximum)
- 5) Articulation of a strategy to incorporate the work of the Youth Diversion Coordination Program with use of non-traditional services and supports accessed through the Collaboratives. (10 bonus points)

A proposal may receive up to seventy (70) points.

### **Review Panel**

When the proposals are received, a panel appointed by the Director of the Department of Mental Health will review the proposals and will individually rank the respondents based upon the information submitted using the evaluation criteria included in this NOFA. The panel may then interview the highest scoring respondents for additional information and to determine how each respondent handles questions relevant to the performance of the project activities required by the award. The panel may choose not to interview the highest scoring respondents or make take other appropriate action including recommending that all responses to the NOFA be rejected.

### **Decision on Awards**

The above selection process will result in a recommendation to the Director of the Department of Mental Health for awards or a recommendation that no awards be made. When the Director makes an award, the Department and the selected agency will enter into a written Agreement. The Agreement will provide for the disbursement of funds in accordance with a schedule. The Agreement will be subject to D.C. laws and regulations.

The Agreement shall include, but not be limited to, a statement of the purpose of the award, the amount of the award, the term of the project, reference to applicable statutes and rules and a requirement that the recipient shall comply with the scope of work, outcome criteria, reporting requirements, a payment schedule and the name, address and telephone number of the project manager at DMH and the agent for the recipient.

## **SECTION VII            APPLICATION FORMAT**

In order to be considered, the proposal must adhere to the following outline:

- I.        Description of the agency and its experience in providing services to juveniles diverted due to their truancy or contact with MPD or other agencies that process youth into the juvenile justice system.
- II.       Description of agency's administrative structure and fiscal capacity to provide Youth Diversion Coordination Program services to a maximum of seventy-five (75) diverted juveniles.
- III.      Agency's budget for the expenditure of these funds.
- IV.      Plans to ensure cultural competence in provision of services.

The above narrative **must not** exceed ten (10) double-spaced pages. Attachments are to be limited to the agency's mission statement; resumes of key staff; and copies of the agency's overall budget and organization chart. Attachments are not included in the ten (10) page limit.

**Proposals not in compliance with the above limitations will not be scored.**

**NOTICE OF FUNDS AVAILABILITY****DISTRICT OF COLUMBIA PUBLIC SCHOOLS  
OFFICE OF FEDERAL GRANTS PROGRAMS*****NO CHILD LEFT BEHIND  
SUPPLEMENTAL EDUCATIONAL SERVICES PROGRAM  
FY 2003-2004***

The District of Columbia Public Schools (DCPS), Office of Federal Grants Programs is soliciting applications from qualified applicants to provide supplemental educational services to eligible students in Title I schools identified as in need of improvement. The purpose of these services is to increase the academic achievement of students in reading/language arts and mathematics. These services may include academic assistance such as tutoring, remediation and other educational interventions. Supplemental education services, as authorized by the No Child Left Behind Act of 2001 (P.L. 107-110), must be high quality, research-based and specifically designed to increase student academic achievement.

It is anticipated that DCPS will have available approximately \$1,200 per year per pupil. Applications exceeding the pupil amount will not be considered. Successful service provider applicants will be placed on the State Approved List for two years contingent on evidence of students' increased academic achievement.

The Request for Applications (RFA) will be released on June 13, 2003 and the deadline for submission is July 14, 2003 at 5:00 p.m. Applications can be obtained from the Office of Research and Analysis (ORA), 441 4<sup>th</sup> Street, NW, (Judiciary Square), Suite 400 South, Washington, DC 20001. For additional information, please call ORA on (202) 727-7775. The RFA will be available on the OCFO website, located at [www.cfo.washingtondc.gov](http://www.cfo.washingtondc.gov), no later than June 20, 2003.

A Pre-Application Conference will be held on June 27<sup>th</sup>, 2003, from 10:00am to 1:00pm at the Logan Professional Development Training Center Auditorium, 215 G Street, NE, Washington, DC 20002.

Tri-Community Public Charter School  
4324 Georgia Avenue, N.W.  
Washington, D.C. 20011

NOTICE FOR PROPOSALS FOR  
EARLY CHILDHOOD CLASSROOM FURNITURE

Tri-Community Public Charter School, in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995, solicits proposals to furnish 5 classrooms for students ages 3 and 4.. The furniture shall consist of six work tables, 18, 20, and 22 appropriately sized chairs, three computer tables, 18, 20, and 22 cubbies per classroom, wall coat racks and shelves; 2 book cases per classroom – 3' high by 14" deep by 6' length, and a teacher desk with chair.

Providers must state their credentials and provide appropriate references. No proposal will be considered without an estimated cost.

Proposals shall be received no later than 5:00 P.M. June 27, 2003. Proposals should be sent to the listed address, Attention, Ronald Hasty, Executive Director.

Tri-Community Public Charter School  
4324 Georgia Avenue, N.W.  
Washington, D.C. 20011

NOTICE FOR PROPOSALS FOR EQUIPMENT AND INSTALLATION OF  
CLASSROOMS COMPUTERS

The Tri-Community Public Charter School, in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995, solicits proposals to provide 24 classroom computers with a Windows OS, a server for six office computers, and a T-1 line for 8 classrooms of students ages 3 and 4, Kindergarten, first, and second grades. The equipment must be appropriate for use in the classroom. Storage will be primarily on the server. Quote for installation should be separate from quote for hardware.

Providers must state their credentials, provide appropriate references and suggested configurations of equipment and installation. No proposal will be considered without an estimated cost.

Proposals shall be received no later than 5:00 P.M. June 20, 2003. Proposals should be sent to the listed address, Attention, Ronald Hasty, Executive Director.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Appeal No. 16879-A of Nebraska Avenue Neighborhood Association**, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs, in the issuance of a building permit (No. B442149) on January 22, 2002, to Sunrise Connecticut Avenue Assisted Living LLC, allowing a modification to Permit No. B435454 (dated March 8, 2001) allowing revisions to the roof plan/structure, including the elevator, in an R-2 and R-5-D District at premises 5111 Connecticut Avenue, N.W. (Square 1989, Lot 162).

**DECISION DATE:** February 4, 2003

**DECISION AND ORDER**

This decision and order concerns a Motion to Accept a Late Filed Motion for Reconsideration and Rehearing of Appeal No. 16879, filed by Appellant, Nebraska Avenue Neighborhood Association ("NANA"). For the reasons stated below, the Board finds that the Appellant did not make a showing of good cause to excuse its late filing. The Board therefore denies the Appellant's Motion.

**Background**

NANA filed appeal No. 16879 with the Board of Zoning Adjustment on March 19, 2002, challenging the decision of the Zoning Administrator to approve the issuance of a building permit to Sunrise Connecticut Avenue Assisted Living LLC ("Sunrise") for the "revision to roof plan/structure to include elevator only per plans," at 5111 Connecticut Avenue, N.W. (Square 1989, Lot 162), in an R-2 and R-5-D Zone District. NANA had previously unsuccessfully challenged the initial building permit for the same location in Appeal No. 16716A, and then filed a subsequent unsuccessful Motion for Reconsideration and Rehearing for that case.

By the issuance of an order dated November 8, 2002, the Board dismissed Appeal No. 16879, having found: 1) the issue regarding the safe functioning of the elevator was outside the Board's jurisdiction; 2) materials submitted to the Board by Sunrise were not misleading; 3) there were no changes in the minimum rear yard requirements; and 4) the revised permit drawings did not show that there had been an increase in the floor area ratio.

On November 22, 2002, NANA filed a written request for a rehearing and reconsideration for Appeal No. 16879. Section 3126.2 of the Zoning Regulations provides that a "motion for reconsideration . . . of any decision of the Board" must be "filed with the Director within ten (10) days from the issuance of a final written order by the Board." Section 3110.2 provides that the last day of the period specified in any rule "shall be included unless it is a Saturday, Sunday or official District of Columbia holiday, in which event the period shall run until the end of the next day that is neither a Saturday, Sunday, nor official holiday". "[T]hree days shall be added to the prescribed period" when service is by mail. 11 DCMR § 3110.3.

BZA APPLICATION NO. 16879-A

PAGE NO. 2

Since the Board's decision was served by mail, three days were added to the prescribed ten-day period. The thirteenth day did not fall on a weekend or holiday. The Motion for Reconsideration and Rehearing was filed fourteen days after the date of the order dismissing NANA's appeal, and was therefore returned to NANA by the Office of Zoning.

On November 29, and December 3, 2002, NANA filed letters asking the Board to accept NANA's late-filed motion. The Board treated NANA's November 29 request as a motion. The December 3<sup>rd</sup> letter was not made part of the record.

On December 3, 2002, NANA also filed a Petition for Review of this case with the District of Columbia Court of Appeals (Case No. 02-AA-1368). The filing of the petition effectively transferred jurisdiction over this case to the Court of Appeals. In order to consider the November 29<sup>th</sup> motion to accept NANA's late filed pleading that was filed with the Board, the Appellate Division of the Office of the Corporation Counsel asked that the case be remanded to the Board. On January 7, 2003, the Court of Appeals remanded the case accordingly.

On December 20, 2002 and January 13, 2003, NANA submitted additional requests for a rehearing and/or reconsideration of Appeal No. 16879.<sup>1</sup>

On February 4, 2003, at its regularly scheduled meeting, the Board denied NANA's motion to accept the late filed motion.

### **Decision**

NANA should have filed its motion for reconsideration and rehearing by November 21, 2002, the thirteenth day after the date the final order was issued and mailed on its appeal. The motion was filed one day later. Any prescribed time period may be extended by the Board for good cause. 11 DCMR § 3110.4.

NANA makes no claim that circumstances beyond its control prevented it from filing its motion to reconsider by November 21<sup>st</sup>. Instead NANA chose to interpret the time computation rule in a manner that would provide an extra day for filing and thus consciously took the risk that its motion would be ruled untimely. Further, NANA insinuates that the Board has no choice but to accept this interpretation, because a staff member purportedly agrees with it. Neither of these circumstances constitute good cause.

### **NANA's Interpretation of the Board's Time Computation Rules**

NANA claims, in its November 29<sup>th</sup> motion, that it relied on a "literal interpretation" of the Zoning Regulations to ascertain that November 22, 2002, was the last day for filing its motion for reconsideration and rehearing. Pursuant to the regulations cited above, parties are given ten days to file a motion for reconsideration and/or rehearing, with three days added to that time period where the decision was served by mail. When the last day of a time period falls on a

---

<sup>1</sup> These submissions too were not timely filed (see above discussion) and no motion to accept these filings was made. Moreover, NANA does not allege that the information could not have been presented at the hearing, or any other earlier date. Therefore, these submittals were not considered in deciding this motion.

BZA APPLICATION NO. 16879-A

PAGE NO. 3

weekend or holiday, the time period is extended to the first following business day. However, the November 21<sup>st</sup> date does not fall on a weekend or a holiday. Nevertheless, NANA appears to believe that since the November 11<sup>th</sup> Veteran's Day holiday fell three days after the November 8<sup>th</sup> service date, an additional day was added to the time for filing its motion. Thus, NANA assumed that the three extra days for mailing constitutes a separate time period that is added *to the beginning* of the ten-day period, and that this separate three-day period may also be extended if its last day falls on a holiday. The Board finds this interpretation untenable.

A motion for reconsideration must be filed within ten days after the issuance of a final decision. 11 DCMR § 3126.2. Because the final order on this appeal was served on NANA by mail on November 8, 2002, "three (3) days [were] added *to the prescribed period*", 11 DCMR § 3110.3 (emphasis added). That means that the ten-day period became a thirteen-day period. The thirteenth day (in this case November 21, 2002) was the "last day of the period". Because the last day did not fall on a "Saturday, Sunday, or official District of Columbia holiday", it was "included" in the computation, 11 DCMR § 3110.2.

Thus, the three days added for mailing are not a separate time period, but extend a "prescribed period", in this case the period by which to file a motion for reconsideration. The three days are intended to compensate for the likely time it takes a mailed document to arrive, so that the party will have the same time to respond as if the document were personally served. The purpose of not counting the last day of the period when it falls on a holiday or weekend, is to prevent a situation in which the last day to file is a day on which the Office of Zoning is closed and therefore cannot accept the submission. NANA's view that the three days for mailing are a separate period that is counted first, and then extended if the third day is a holiday, serves no discernible purpose other than delay.

The Board is mindful that this interpretation differs slightly from that of the District of Columbia Court of Appeals, which has a nearly identically worded rule. *See Wallace v. Warehouse Employees Union #730*, 482 A.2d 801 (D.C. 1984). There, following the federal courts, if the tenth day after a judgment is rendered falls on a Saturday, Sunday, or legal holiday, the ten-day period for filing a motion for reconsideration does not toll until the next business day. It is to this last day that three extra days are then added for mailing. Thus, the Court of Appeals does not look at one thirteen-day period, but considers there to be two separate periods, one of ten days followed by one of three days. If either of these periods ends on a weekend or holiday, the time for filing is extended. *See id.* at 806-08.

The Court of Appeals, however, has noted that its interpretation is at odds with the rule in other states and has been frowned upon by some federal courts, though followed there in the interest of uniformity. *Id.* at 808-09 (1984). The Board follows state court interpretations because the method of calculation reduces the number of variables. Nevertheless, even under the Court of Appeals' method of calculation, NANA's appeal is untimely because the tenth day after the Board's decision fell on a Monday and the third day of the mailing period fell on a Thursday.

The Board thus finds NANA's interpretation implausible. However, even if the computation rules were susceptible of more than one interpretation, NANA should have filed based upon the earliest conceivable concluding date. Again, NANA offers no explanation why November 22<sup>nd</sup>

was the earliest date that it could have filed its motion. Therefore, NANA failed to demonstrate good cause

NANA's Reliance upon a Staff Person's Purported Statement

NANA states in its November 29, 2002 submittal that, in response to NANA's inquiry, an Office of Zoning staff member indicated that if the third day provided for mailing fell on a holiday, "an additional day shall be allowed". The statement itself is innocuous and does not support NANA's position.

In any event, even if the staff person advised NANA that its interpretation was correct, the Board cannot let its decision-making authority be usurped by parties initiating communication with Office of Zoning staff and then demanding that this Board be bound by whatever informal information is given. To do so would be inconsistent with the requirements of the Administrative Procedures Act that all decisions be based upon a record made in the presence of the parties. D.C. Official Code § 2-509 (2001 Ed.). Moreover, the recognition of such a practice would encourage participants in Board proceedings to seek to supplant entirely proper Board rules by informally seeking advice from Office of Zoning staff. Such a practice would lead to time consuming proceedings over the substance and validity of every such communication. This would unnecessarily and unwisely divert the Board's limited resources from its adjudicatory functions.

Additional considerations

Lastly, the Motion discusses a previously-filed August 21, 2002, motion for reconsideration and rehearing for this appeal. This motion was filed prematurely, after the hearing on this case, but prior to the issuance of the Board's order. The motion therefore was not admitted into the record and cannot be considered timely because the Board's order had not yet been issued, 11 DCMR § 3121.9.<sup>2</sup>

Although the Board is not accepting the late-filed motion for reconsideration and rehearing, even the most cursory review reveals that not a single valid ground for reconsideration or rehearing was raised in that motion. The motion merely repeated arguments made prior to the Board's written order (*See* NANA's May 29, 2002, submission), did not point to any relevant new information that was not already in the record, and raised issues outside the scope of the appeal.

As is evident from the filings in this case, NANA has used every conceivable procedural device to stop the building of a facility for persons with disabilities that it has so adamantly opposed. Indeed, NANA has since filed yet a third appeal of the same project, this time appealing the approval of a Wall Test Report. While NANA may continue its relentless efforts to challenge what the Board continues to find to be a lawful structure and use, the Board is not compelled to treat NANA's tactical miscalculation as good cause.

---

<sup>2</sup> This August 21 improperly filed motion is virtually identical to the motion for reconsideration and rehearing filed on November 22<sup>nd</sup>. This further convinces the Board that there is no justification for NANA's delay where it already had in place the arguments it would put forward.

BZA APPLICATION NO. 16879-A

PAGE NO. 5

For the reasons stated above, it is hereby **ORDERED** that the motion is **DENIED**.

**VOTE: 4 - 0 - 1** (Geoffrey H. Griffis, David A. Zaidain, Carol J. Mitten, Curtis L. Etherly, Jr., to deny, Anne M. Renshaw recusing herself).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring member has approved the issuance of this Decision and Order.

**FINAL DATE OF ORDER: MAY 27 2003**

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL. CB/rsn

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application Number 16962 of Mr. & Mrs. Aislee Smith**, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 403, a variance from the rear yard requirements under § 404, and a variance from the nonconforming structure provisions under subsection 2001.3, to allow the construction of a three-story addition to a row dwelling in an R-4 District at premise 2304 1<sup>st</sup> Street, N.W. (Square 3125, Lot 75).

**HEARING DATE:** January 7, 2003

**DECISION DATE:** February 4, 2003

**DECISION AND ORDER**

The applicants in this case are Mr. and Mrs. Aislee Smith ("Applicants"), the owners of the property that is the subject of this application. The property is improved with a nonconforming Edwardian-era row house, which had a garage attached at the rear. The garage was structurally unsound and recently razed. The Smiths would like to replace the garage on the old footprint and add a three-story addition on top of it. Realizing that they needed zoning relief in order to effectuate their plans, the Applicants filed the appropriate application with the Board of Zoning Adjustment of the District of Columbia ("Board").

On January 7, 2003, the Board held a public hearing on the application. The Applicants testified on their own behalf and their neighbors, Mr. and Mrs. Shafer, testified as parties in opposition. The hearing was completed on January 7<sup>th</sup>, but the Board determined that additional information was needed from the parties prior to making its decision. After receipt of such information, the Board held a public decision meeting on February 4, 2003 and, for the reasons stated below, voted 5-0-0 to partially grant and partially deny the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated October 29, 2002, the District of Columbia Office of Zoning ("OZ") notified the City Councilmember for Ward 5, Advisory Neighborhood Commission ("ANC") 5C, as well as the ANC member for Single Member District 5C05, the District of Columbia Department of Transportation ("DDOT") and the District of Columbia Office of Planning ("OP"), of the filing of the application. Pursuant to § 3113.13 of Title 11 of the District of Columbia Municipal Regulations ("DCMR"), the OZ published notice of the hearing on the application in the District of Columbia Register and on November 8, 2002, mailed notices to the ANC, the Applicant, and

BZA APPLICATION NO. 16962

PAGE NO. 2

to all owners of property within 200 feet of the subject property, advising them of the date of the hearing. Further, Applicants' affidavit of posting indicates that on June 28, 2002, they placed a zoning poster on the subject property, in plain view of the public.

Requests for Party Status. The Board granted party status to Mr. Lonzo Shafer, one of the Applicants' next door neighbors. ANC 5C was automatically a party to the proceeding. There were no parties in support.

Applicants' Case. The Applicants both testified to the need for the expansion of their home. They testified in support of their variance application and presented a letter from a consulting engineer recommending demolition of their garage for reasons of public safety. Their architect, however, was not present at the hearing and therefore, did not testify.

Government Reports. On January 28, 2003, OP filed a late report, which was accepted by the Board. OP recommended approval of the variance relief requested by the Applicants, as well as two areas of relief not advertised: a variance from § 401, minimum lot dimensions, and a variance from §2300.2, private garages and carports.

ANC Report. By letter dated January 2, 2003, ANC 5B indicated that it voted 7-0 at a December 17, 2002 meeting, with a quorum present, to support the application.

Parties and Persons in Support. There were no parties in support of the application. Mr. George Crawford and Mrs. Harriet Crawford, the Applicants' next door neighbors to the south, testified as persons in support. The record also contains several letters in support of the application from community members.

Parties and Persons in Opposition. Mr. Lonzo Shafer, the Applicants' next door neighbor to the north, testified as a party in opposition. Although his wife, Mrs. Deborah Shafer, had not filed an individual party status application, she testified in opposition to the application along with her husband. The Shafers testified that their light and air would be greatly diminished by the Applicants' proposed addition and that the character and uniformity of the neighborhood would be detrimentally altered if the application were granted. They also testified concerning the possible impact of the construction on the party wall in the rear of their property.

Hearing. The Board held, and completed, a public hearing on the application on January 7, 2003.

BZA APPLICATION NO. 16962

PAGE NO. 3

Decision Meeting. At the public decision meeting on February 4, 2003, the Board voted 5-0-0 to partially grant and partially deny the application, for the reasons stated below.

### FINDINGS OF FACT

1. The subject property is located in an R-4 zone district in Ward 5, at street address 2304 First Street, N.W.
2. The subject property is improved with a nonconforming four-level, three-story row house, built in 1907. The row house fronts on First Street, N.W. and is bounded in the rear by a 12-foot, 7-inch wide alley.
3. The subject property is in a residential area, with row houses essentially surrounding the subject site. All, or substantially all, of these surrounding row dwellings are set back 6.5 feet from the front lot line, as is the Applicants.'
4. The lot on which the Applicants' row dwelling is sited is 1, 632.63 square feet in size, and 17.65 feet wide. The lot is nonconforming because, in an R-4 district, the zoning regulations require a minimum lot size of 1,800 square feet and minimum lot width of 18 feet. (*See*, 11 DCMR § 401.3). Lots of this or similar size, however, appear to be the rule, rather than the exception, in the neighborhood. All 17 lots on Applicants' block are either 1632 or 1633 square feet in size.
5. The Applicants propose to expand and modernize their row dwelling by attaching a large addition in the rear. The proposed addition will consist of a private garage on the ground floor, an expanded kitchen on the first floor, a bedroom on the second floor, and a sunroom on the third floor. The upper floors of the addition will be set back from the rear lot line 4 feet, 10 inches, but the ground floor garage will extend to the lot line.
6. The new garage will replace, and share the same footprint with, a garage previously on the site, which was razed for public safety reasons.
7. The proposed addition will reduce the minimum building setback from the rear lot line from the required 20 feet to 0 feet. (*See*, 11DCMR § 404.1).
8. The proposed addition will increase the dwelling's lot occupancy from the maximum allowable 60% to 79%. (*See*, 11 DCMR § 403.2).

BZA APPLICATION NO. 16962

PAGE NO. 4

9. The row dwelling has an open court area between it and the adjacent row dwelling to the south. All the row dwellings in the surrounding neighborhood have such open courts, often with the property line dividing two adjacent lots running through the center of the court area, as is the case with the subject property and its southern neighbor.

## CONCLUSIONS OF LAW

The Board is authorized to grant a variance from the strict application of the zoning regulations in order to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." *Id.* In this context, the Board must consider the effect of the variance relief on the "public good," including the surrounding properties, and the size and massing of a building which would result from the granting of such relief. The Applicants are applying for area variances and so must make the lesser showing of "practical difficulties," and not the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972).

### The Garage

The Applicants razed their garage because it was structurally unsound. If it had been sound, it would still be standing and still be of use. The Applicants, therefore, had an off-street parking space, which they have now lost and would like to replace. Although they are not required to provide an off-street parking space, they propose to build a new garage on the old one's footprint in order to furnish one parking space. In order to do so, however, they need variances from § 401, to permit a lot width of less than 18 feet, § 403, to permit a lot occupancy of more than 60%, § 404, to permit a rear yard of less than 20 feet, and § 2001.3, to permit the enlargement of their nonconforming row dwelling.<sup>1</sup>

---

<sup>1</sup>During the hearing, there was some question as to whether the Applicants needed relief from § 2115.1, which states that "required" parking spaces be 9 feet wide by 19 feet long. The Applicants' new garage will provide a parking space which is only 18.1 feet long, but the Board has determined that, by virtue of the fact that the Applicants' dwelling was built before 1958, § 2100.1 exempts it from a parking space requirement. Therefore, § 2115.1 is inapplicable.

The Applicants' position is brought about by the unique circumstance that the previous garage was in such poor, actually dangerous, condition that it had to be razed. If it had been salvageable, the Applicants could have repaired it as a matter-of-right. Practical difficulty arises in that there is no other appropriate location on the lot to accommodate a parking space. It makes sense to re-build the garage on the footprint of the old one and will not cause any detriment to the public good or the zone plan. In fact, the Board finds that the public good will be enhanced by the re-construction of the garage, as it will open up an on-street parking space.

The Addition to the Row Dwelling Located Over the Garage

Other than for the re-building of the garage, however, the Board concludes that the Applicants failed to show any extraordinary or exceptional situation or condition of the subject property to support the granting of variance relief. It is true that the Applicants' lot is nonconforming, but there are legions of such nonconforming lots in the neighborhood, in fact, throughout the District of Columbia. Ownership of a nonconforming structure on a nonconforming lot does not automatically entitle one to a variance, let alone to 4 variances. There must be something more. There must be something that is unique to the Applicants' particular structure and/or lot in order to make variance relief a possibility. As stated by the District of Columbia Court of Appeals, "[t]he critical point is that the extraordinary or exceptional condition must affect a single property." *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). Although sympathetic to the Applicants' claimed need for more living space, the Board cannot find any extraordinary or exceptional situation or condition of the Applicants' property. Indeed, the Applicant himself, in response to a question as to the lot widths of "other properties," (presumably other nearby properties), stated "[t]hey're all the same." (Transcript ("Trans.") of January 7, 2003 Public Hearing, at 48, line 5). His nonconforming lot width cannot therefore constitute the uniqueness required for variance relief.

The Applicants rely not only on the nonconformity of their lot to establish uniqueness, but also on the existence of an open court between their home and the home to the south. Applicants claim that the court causes a decrease in the width of their dwelling as one travels from front to back. Here again, however, it appears from the record that virtually all the row dwellings in the neighborhood share a similar court feature. When discussing the challenges caused by the

---

Also, OP suggested that the Applicants might need relief from § 2300.2 to permit a reduction of the setback of the private garage from the centerline of the abutting alley. Section 2300.2, however, only applies to garages that are "accessory buildings," which is not the case here.

BZA APPLICATION NO. 16962

PAGE NO. 6

interior configuration of their home, which are partially due to the existence of the court, the Applicant stated "most of these row homes are very similar." (Trans. at 27, lines 20-21). This sentiment was echoed by the Applicants' southern, court-sharing neighbor, who stated, "we have all the same issues that they have on their property." (Trans. at 56, lines 2-3). Further, as to practical difficulties, the cut-out of the court may force smaller rooms inside the dwellings, but the Applicants made no showing of any attempt to work within the zoning regulations to modify their home's interior to provide more, or a better-configured, living area. In fact, other than one conclusory statement as to their inability to expand their home into the court area, the Applicants made no showing of practical difficulties caused by either the nonconforming size of their lot or by the existence of the court area.

The Applicants' proposed addition is also rather large and out of proportion with the neighborhood. From the record, it appears much larger than other, more modest, additions in the neighborhood. Even with its proposed setbacks, it will likely have a negative effect on the privacy, light, and air of adjacent properties and therefore variance relief cannot be granted without substantial detriment to the public good. The Board concludes that the Applicants' proposed addition will negatively impact the public good and that it impairs the integrity of the R-4 zone plan by substantially impinging on the open space above the Applicants' rear yard area.

The Board also notes that the Applicants knew of the existence of the court, as well as the interior configuration and nonconformities of the property, when they purchased it.

#### The ANC and OP Recommendations

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). The ANC, in its report, did not bring up any special concerns, and no ANC representative testified at the hearing. Therefore, the Board need only consider the ANC's recommendation to approve the variance relief requested. The Board, as stated above, agrees with OP's suggestion that relief from § 401 is necessary with respect to the replacement of the garage, but has carefully considered both OP's overall recommendation of approval and that made by the ANC, and finds them unpersuasive when weighed against the evidence in the record and the applicable legal principles.

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicants have satisfied the burden of proof with respect to the application for variance relief from § 401, § 403, § 404 and § 2001.3, but only with respect to re-construction of the previously-existing garage. Concomitantly, the Board concludes that the Applicants have failed to satisfy the burden of proof

BZA APPLICATION NO. 16962

PAGE NO. 7

with respect to the application for variance relief from § 401, § 403, § 404 and § 2001.3 with respect to any construction other than the re-construction of the garage. It is therefore **ORDERED** that the application is **PARTIALLY GRANTED**, in order to permit re-construction of the garage only, and **PARTIALLY DENIED**, insofar as the requests for relief pertain to any construction other than the re-construction of the garage.

**VOTE:**                      **5-0-0**                      (Geoffrey H.Griffis, Anne M. Renshaw, David Zaidain, Curtis Etherly, Jr. and Zoning Commission Member Anthony Hood, to partially grant and partially deny.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each voting Board member (other than former member Renshaw) has approved the issuance of this Order partially granting and partially denying this application.

**FINAL DATE OF ORDER:** **MAY 27 2003**

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL

BZA APPLICATION NO. 16962

PAGE NO. 8

COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. LM/RSN